

Decision 04-03-026 March 16, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Searles Domestic Water Company LLC (U-368-W), IMC Chemical North America LLC, and Doe Holdings Corp. for authority to transfer control of Searles Domestic Water Company LLC.

Application 04-01-029
(Filed January 23, 2004;
amended February 10, 2004)

OPINION GRANTING AUTHORITY FOR CHANGE OF CONTROL

1. Summary

As part of a corporate reorganization, applicants pursuant to Pub. Util. Code § 854 seek transfer of control of Searles Domestic Water Company (Searles), a public utility water company serving 1,100 customers in San Bernardino County. The application is unopposed. The application is granted. This proceeding is closed.

2. Nature of Application

Searles, IMC Chemical North America LLC (IMC-CNA) and SVM Minerals Holdings, Inc.¹ (SVM) jointly request approval of the transfer of control

¹ SVM Minerals Holdings, Inc. was identified in the original application as Doe Holdings Corp., signifying an unidentified holding company that was to be named as the transactions progressed. Applicants on February 10, 2004, filed an amended application to identify the holding company created by the parties.

of Searles from IMC-CNA to SVM. The transfer of control is part of a larger transaction in which SVM will acquire 80.1% of the stock of IMC Chemicals Inc. (IMC Chemicals), a subsidiary of IMC-CNA and the parent company of Searles and a number of other subsidiaries that are not public utilities. The remaining 19.9% of the IMC Chemicals shares will be retained by IMC-CNA.

Searles was formed in the early 1940s as an outgrowth of commercial operations to recover minerals and chemicals from brine pumped from Searles Lake, a dry lakebed in San Bernardino County. To provide water to operate plants and potable water to employee families located in communities along the lake's west shoreline, Searles was organized as a California corporation² and was granted a certificate of public convenience and necessity by Decision (D.) 36822 on January 12, 1944 (amended on March 19, 1944 by D.36936 to revise the service area). Searles provides water service to the communities of Argus, Trona, Pioneer Point, South Trona, Westend and Point of Rocks, all in the unincorporated area of Trona.

IMC-CNA is part of the IMC Global Inc. organization, one of the world's leading producers of crop nutrients for agriculture. That organization and its subsidiaries operate retail and wholesale distribution networks throughout the United States.

SVM is an entity formed by Sun SVM Minerals, LLC, a wholly owned direct subsidiary of Sun Capital Partners, Inc. (Sun Capital), a private investment firm focused on leveraged buyouts of companies that are leaders in their

² In connection with a proposed merger approved by the Commission in D.99-04-006, Searles was converted from a corporation to a limited liability company. This change in form of organization did not change the control of Searles.

markets. SVM was organized to hold the shares of IMC Chemicals that will be transferred as part of the transaction described in an Equity Purchase Agreement, a draft of which is attached to the application as Exhibit D.

Since its inception in 1995, Sun Capital has invested in approximately 60 companies with combined sales in excess of \$8 billion. Sun Capital has offices in Boca Raton, Florida, and in Los Angeles and New York. Sun Capital obtains funds for investment from its limited partners, a group of private investors who pool capital for the purpose of investing in market-leading companies. Upon approval of this application, Sun Capital would be the ultimate parent of SVM and Searles.

In that the transfer of control of Searles to SVM and Sun Capital is a corollary of the larger equity transaction, applicants have filed this application pursuant to Pub. Util. Code § 854 for authorization of the proposed transfer of the water utility. As relevant here, § 854 provides that no corporation, whether or not organized under the laws of California, shall control any public utility organized and doing business in California without first having secured authorization to do so from this Commission.

The Equity Purchase Agreement attached to the application describes the series of transactions that have the effect of transferring ultimate control of Searles from IMC-CNA to Sun Capital. Searles is associated with mineral extraction operations in its vicinity and was acquired by IMC-CNA as part of its acquisition of those operations. (*See* D.98-03-069, March 26, 1998.)

3. Effect on Service and Rates

Applicants state that, in the framework of the transactions described in the Equity Purchase Agreement, the transfer of control of Searles is a relatively minor byproduct of the other transfers that are the focus of the agreement.

Applicants state that there will be no change in the services or rates provided by Searles after the completion of the transactions. According to applicants, the transactions will be wholly transparent to customers, and services will continue to be provided in accordance with Searles' existing terms of service and applicable Commission regulations.

Applicants state that a settlement agreement applicable to Searles that was approved by the Commission in D.94-01-042 (January 19, 1994) will remain in full force and effect and will not be affected by the proposed transactions. The settlement agreement, negotiated by the company and the Commission's Water Division, places caps on the price of purchased water based on measurable indexes and provides for reasonableness review of Searles operations from time to time. Applicants confirm that there will be no change in rate base value, as defined in Pub. Util. Code § 2720, after completion of the transactions.

Rule 6.1 of the Rules of Practice and Procedure requires the Commission to preliminarily determine the category of the proceeding and whether a hearing is indicated. By Resolution ALJ 176-3128, adopted February 11, 2004, the Commission preliminarily designated this application as "ratesetting," with the probability that no hearing would be required. No protests have been received, and the contemplated corporate acquisition of stock appears to be noncontroversial. Given this status, a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3128.

4. Environmental Consideration

Under the California Environmental Quality Act (CEQA), the Commission must consider the environmental consequences of projects that are subject to its discretionary review. (Pub. Res. Code § 21080.) As pertinent to this application, CEQA defines "project" as an activity that "may cause either a direct physical

change in the environment, or a reasonably foreseeable indirect physical change in the environment” and that involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (Pub. Res. Code § 21065.)

Here, approval of a transfer of control of utility property involves issuance of an “entitlement for use” under CEQA, but it does not cause any direct physical change in the environment, because the transfer is a purely legal happening. (*See, Pacific Gas and Electric Co.*, D.97-07-019.) Moreover, there do not appear to be any foreseeable indirect physical changes in the environment due to the transfer.

We conclude that the application does not constitute a “project” as defined in CEQA, and no further actions under CEQA are required. We note that, even were we to conclude that the transfer of control qualified as a “project” under CEQA, the transfer would qualify for a categorical exemption from the requirements of CEQA. The CEQA Guidelines (14 Cal. Code of Regs. §§ 15000, *et seq.*) provide for such an exemption if it can be seen with certainty that there is no possibility that the proposed transfer may have a significant effect on the environment, and the transfer of control involves no change in use beyond previously existing uses. (14 Cal. Code of Regs. §§ 15061(b)(3), 15301(b).) The facts underlying this application meet both conditions.

5. Discussion

Pub. Util. Code § 854 requires prior authorization of the Commission for any transfer of control of a public utility. This is because it is the function of the Commission to protect the public interest and prevent impairment of the public service by a transfer into the hands of parties incapable of rendering adequate

service at reasonable rates or upon terms that would produce the same undesirable result. (*So Cal. Mountain Water Co.* (1912) 1 CRC 520.)

The Commission requires an affirmative showing in cases like this that the transaction will in fact benefit the affected ratepayers. (*Country Water Estates Water Co.* (2000) D.00-05-027.) The parties assure us that Searles' existing terms of service will continue and that all applicable regulations will be observed. No change will be made to the service or rates provided by Searles. The price Searles will pay for water will continue to be calculated using the power and payroll cap provided by the settlement agreement approved in D.94-01-042, and will continue to be subject to reasonableness review by the Commission in any future rate proceeding initiated by Searles.

The transfer should provide tangible benefits to Searles ratepayers through the availability of the significant cash reserves and liquidity maintained by SVM's ultimate parent, Sun Capital. Sun Capital states that it has available \$400 million for use in maintaining its holdings, including, if necessary, additional financial support for Searles.

6. Expedited Treatment

Applicants requested approval of this application before March 17, 2004.³

The Commission has moved expeditiously on this application. The assigned administrative law judge (ALJ) prepared and circulated the Proposed

³ Applicants on February 10, 2004, also filed a motion to shorten the protest period from 30 days to 20 days. Because as a practical matter the shortened time would make no difference in the date that the Proposed Decision could be added to a Commission agenda, the motion is denied.

Decision soon after the amended application was filed. No protest was filed, so we are waiving public review and comment, as discussed below.

Pursuant to the provisions of California Health and Safety Code (CH&S) § 116525(a), any person or entity operating a public water system must have a permit to operate that system from the Department of Health Services. A change in ownership of a public health system requires the prospective new owner to apply to and satisfy the Department's requirement that the new owner "possesses adequate financial, managerial, and technical capability to assure the delivery of pure, wholesale, and potable drinking water" (CH&S Code § 116540). Accordingly, apart from authorization from the Commission for SVM to acquire Searles, SVM must also apply to the Department of Health Services for reissuance of the existing permit of Searles.

7. Section 311 Comments

Because this is an uncontested matter in which the decision grants the relief requested, we waive the 30-day comment period otherwise required by Pub. Util. Code § 311. (*See* Pub. Util. Code § 311(g)(2).)

8. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Glen Walker is the assigned ALJ in this proceeding.

Findings of Fact

1. Searles is a Delaware limited liability company providing water service to the communities of Argus, Trona, Pioneer Point, South Trona, Westend and Point of Rocks, all located on the west shoreline of Searles Lake in San Bernardino County.

2. The water company operates under authority granted by the Commission in 1944 in D.36822 and D.36939.

3. IMC Chemicals is the parent company of Searles, and IMC-CNAN is the parent company of IMC Chemicals.

4. A proposed Equity Purchase Agreement would transfer 80.1% of the stock of IMC Chemicals to SVM, a subsidiary of Sun Capital. The transaction would have the effect of transferring indirect control of Searles to SVM and Sun Capital.

5. The transaction contemplates no change in the services or rates provided by Searles, and a 1994 settlement agreement regarding Searles' cost of purchased water and reasonableness reviews would continue in effect.

Conclusions of Law

1. The proposed transfer of stock is not a "project" that requires further actions under CEQA.

2. The transfer should benefit Searles ratepayers because of the significant cash reserves and liquidity maintained by SVM's ultimate parent, Sun Capital.

3. The application should be approved.

4. This order should be made effective immediately in order that the parties may carry out the proposed transfer expeditiously.

O R D E R

IT IS ORDERED that:

1. Within six months after the effective date of this order, IMC Chemical North America LLC (IMC-CNA) may transfer control of Searles Domestic Water Company LLC (U-368-W) (Searles) to SVM Minerals Holdings, Inc. (SVM) in accordance with the terms and conditions set forth in this application.

2. Within 10 days of the actual transfer of control of Searles, IMC-CNA and SVM shall notify the Director of the Water Division of the Commission in writing

of the date on which the transfer was consummated. A true copy of the instrument effecting the transfer shall be attached to the written notice.

3. This application is closed.

This order is effective immediately.

Dated March 16, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President

CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners